

Exhibit 3

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 ANTHONY JACINO and GLASS STAR)
5 AMERICA, INC.,)
6)
7 Plaintiffs,)
8 vs.)
9 16-CV-01704(BMC)
10)
11 ILLINOIS TOOL WORKS, INC., ITW)
12 GLOBAL BRANDS, ITW POLYMERS &)
13 FLUIDS, and PERMATEX INC.,)
14)
15 Defendants.)
16 -----)
17 ILLINOIS TOOL WORKS, INC.,)
18)
19 Counterclaimant,)
20 vs.)
21)
22)
23 GLASS STAR AMERICA, INC.)
24)
25 Counterclaimant.)
-----)

17 ATTORNEYS' EYES ONLY VIDEOTAPED DEPOSITION OF
18 ANTHONY JACINO, SR.
19 Farmingdale, New York
20 Thursday, March 30, 2017
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24 Reported by: Philip Rizzuti

25 Job No: 121193

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March 30, 2017

9:56 a.m.

Deposition of ANTHONY JACINO,
SR., held at the offices of TSG
Reporting Company, 855 Conklin Street,
Farmingdale, New York, pursuant to
notice, before Philip Rizzuti, a
Notary Public of the State of New York

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A P P E A R A N C E S:

INTELLECTULAW

Attorneys for Plaintiffs

25 Little Harbor Road

Mount Sinai, NY 11766

BY: PANAGIOTA TUFARIELLO, ESQ.

THOMPSON COBURN

Attorneys for Defendants

One US Bank Plaza

St. Louis, MO 63101

BY: MICHAEL NEPPLE, ESQ.

ALSO PRESENT:

MANUEL GARCIA, Videographer

ANTHONY JACINO, JR.

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IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that the filing, sealing and
certification of the within deposition shall
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same force
and effect as if signed and sworn to before
the Court.

1 Anthony Jacino Sr. - attorneys' eyes only

2 THE VIDEOGRAPHER: This is the
3 start of media labeled number 1 of the
4 video recorded deposition of the Anthony
5 Jacino in the matter of Anthony Jacino
6 and Glass Star America Inc. versus
7 Illinois Tool Works Inc., et al., on
8 March 30, 2017 at approximately 9:56 a.m.

9 My name is Manuel Garcia, I am the
10 legal video specialist from TSG Reporting
11 Inc., the court reporter is Phil Rizzuti
12 in association with TSG Reporting.

13 Counsel please introduce yourself.

14 MS. TUFARIELLO: Good morning my
15 name is Betty Tufariello, I am with
16 IntellectuLaw, The Law Offices of P.B.
17 Tufariello, P.C. I am here on behalf of
18 the plaintiff Anthony Jacino and Glass
19 Star America Inc., and I represent the
20 witness this morning Anthony Jacino Sr.

21 MR. NEPPLE: And I am Mike Nepple,
22 I am from the law firm of Thompson Coburn
23 located in St. Louis, I am one of the
24 attorneys representing the ITW
25 defendants.

1 Anthony Jacino Sr. - attorneys' eyes only

2 THE VIDEOGRAPHER: Would the court
3 reporter please swear in the witness.

4 A N T H O N Y J A C I N O, SR., called as a
5 witness, having been duly sworn by a
6 Notary Public, was examined and
7 testified as follows:

8 EXAMINATION BY

9 MR. NEPPLE:

10 Q. Good morning Mr. Jacino.

11 A. Good morning.

12 Q. Have you ever had your deposition
13 taken before?

14 A. I believe once before.

15 Q. Can you tell me the background of
16 that?

17 A. It was a car accident.

18 Q. Okay. How long ago was that?

19 A. Don't remember.

20 Q. Can you please tell me your full
21 legal name for the record?

22 A. Anthony Jacino Sr.

23 Q. What is your home address?

24 A. 16 Brianna Court, East Moriches,
25 New York.

1 Anthony Jacino Sr. - attorneys' eyes only

2 Q. You founded Glass Star shortly
3 after the breakup of Clear Star?

4 A. Yes.

5 Q. Who were the owners of Glass Star?

6 A. I think I put my children first, I
7 think Anthony I made the president first. We
8 incorporated Glass Star, I was a -- somehow I
9 came back in, but...

10 Q. So the initial incorporation of
11 Glass Star was in the names of your children
12 and they were the shareholders, and then at
13 some point later after Glass Star was started
14 you came back in; is that correct?

15 A. Yes.

16 Q. Did you come back in at a later
17 date because you had an either formal or
18 informal non-compete agreement with your
19 brother?

20 A. I don't believe that was the
21 reason.

22 Q. What was the reason why you jumped
23 back in at a later date and not initially?

24 A. Well I guess it was in discussion
25 with the accountants and things that were --

1 Anthony Jacino Sr. - attorneys' eyes only
2 it was better to do for me to come back in as
3 far as financials, taxes, whatever. Whatever
4 accountants do to make things run smooth, I
5 came back in, I was a consultant.

6 Q. For a while?

7 A. For a while.

8 Q. When you came back in did you come
9 back in as the majority shareholder?

10 A. Yes.

11 Q. Have you always owned the majority
12 of the shares from the time you came back in?

13 A. Yes.

14 Q. Was your share percentage 51
15 percent?

16 A. Thereabouts, 51.

17 Q. What is your percentage today?

18 A. I would say 51.

19 Q. And your son who is sitting at the
20 table here, he owns a share; is that correct?

21 A. Shares.

22 Q. Do you know what his share
23 percentage is?

24 A. Do I know it?

25 Q. Yes. Do you know what his share

1 Anthony Jacino Sr. - attorneys' eyes only

2 Q. When ITW approaches you with a
3 purchase order there is a quantity, a date and
4 a price; correct?

5 A. Yes.

6 Q. You can accept that purchase order
7 or you can negotiate for different terms;
8 correct?

9 A. Yes.

10 Q. And if you sign that purchase
11 order that is an agreement that you agree to
12 produce that many items by such and such day
13 at a certain price; correct?

14 A. No.

15 MS. TUFARIELLO: Objection.

16 Q. Why not?

17 A. I didn't sign any purchase order.

18 Q. Glass Star signed purchase orders;
19 correct?

20 A. No, Glass Star didn't sign
21 purchase orders. From ITW?

22 Q. Correct.

23 A. No. How would we sign purchase
24 orders?

25 Q. Did ITW send purchase orders to

1 Anthony Jacino Sr. - attorneys' eyes only
2 you?

3 A. Send purchase orders to us.

4 Q. And you accepted them; correct?

5 A. Yes.

6 Q. You could decline them; correct?

7 A. Yes.

8 Q. Did Glass Star ever decline an ITW
9 purchase order?

10 A. No.

11 Q. Who did you ask at ITW to adjust
12 the price in the ITW purchase orders from 2014
13 to present; if you did at all?

14 A. I did.

15 Q. Okay?

16 A. Who?

17 Q. Yes, sir.

18 A. Elster.

19 Q. David Elster?

20 A. Yes.

21 Q. Anyone else?

22 A. No.

23 Q. Go ahead.

24 A. The question was who I asked?

25 Q. Yes, who you asked?

1 Anthony Jacino Sr. - attorneys' eyes only

2 Q. You understand what the term
3 exclusive means?

4 A. Yes.

5 Q. Are you still claiming that you
6 have the exclusive right to use those two
7 copyrights and no one else?

8 A. I didn't say no one else.

9 Q. Who else could use those two
10 copyrights?

11 A. My brother.

12 Q. Did you ever grant to Glass Star
13 the rights to use those two copyrights?

14 A. Verbally yes.

15 Q. How did that, how was that
16 accomplished, did you stand up and say --

17 A. Yes, I stood up.

18 Q. You stood up and you said I grant
19 to Glass Star the right to use these two
20 copyrights?

21 A. Not in those words.

22 Q. Okay, how was that done sir?

23 A. This is mine, I held it up.

24 Q. You held up the complaint?

25 A. No, not the complaint, I held up

1 Anthony Jacino Sr. - attorneys' eyes only
2 the patent and the copyright.

3 Q. When did you stand up and say that
4 sir?

5 A. I can't remember.

6 Q. Who was present when you did this
7 sir?

8 A. I can't remember.

9 Q. Was this action documented in the
10 corporate notes or the corporate meeting
11 minutes?

12 A. Not sure.

13 Q. Did you ever inform your brother
14 that you had licensed the two copyrights to
15 Glass Star?

16 A. No.

17 Q. Did he ever inform you that he had
18 licensed the two copyrights to Blue Star?

19 A. No.

20 Q. Did you know that he was using
21 those two copyrights?

22 A. Yes.

23 Q. And you have known since he
24 founded Blue Star, or shortly thereafter?

25 A. I really don't know what he did or

1 Anthony Jacino Sr. - attorneys' eyes only

2 Q. Do you remember any names?

3 A. No. I don't remember.

4 Q. You indicated that you asked that
5 the patent number be on the private label?

6 A. Which they did.

7 Q. And they did it; correct?

8 A. Yes.

9 Q. Did you ask for the copyright
10 registrations to be on the label?

11 A. On the label of what?

12 Q. The same place they put the patent
13 number?

14 A. No, I was under the belief that I
15 just told them patent number.

16 Q. Just the patent number?

17 A. Yes, just the patent number.

18 Q. Sir I will show you what has
19 marked as Exhibit 8, that is Exhibit C
20 attached to your amended complaint in this
21 matter. Take a minute to look at that and I
22 will ask you some questions about it.

23 Ready sir; paragraph 1 it
24 identifies four products that Glass Star was
25 going to private label for the ITW entities,

1 Anthony Jacino Sr. - attorneys' eyes only
2 do you see that?

3 A. Yes.

4 Q. Paragraph 2 gives ITW exclusive
5 rights to use Glass Star America patents and
6 exclusive distribution rights of the products
7 identified in paragraph 1. Do you see that?

8 A. Yes.

9 Q. And then there is the exception
10 for accounts that you already had; correct?

11 A. Yes.

12 Q. Paragraph 3 says in order to
13 maintain that exclusive distribution ITW
14 guarantees orders, a minimum of 15,000 at a
15 time; correct?

16 A. Yes.

17 Q. So at that time the agreement in
18 April of 2006 you knew that an order coming in
19 would be 15,000 units at a pop; right?

20 A. I am not sure that was the case
21 every time they sent a purchase order. It
22 might have been less.

23 Q. We can talk about that in a bit,
24 and I will talk about that, but I am saying
25 the contract that was signed in 2006, ITW said

1 Anthony Jacino Sr. - attorneys' eyes only
2 that they would order in 15,000 units a pop;
3 right?

4 A. Can I explain what that number
5 was?

6 Q. Sure.

7 A. That was what the printer required
8 for the plate that was going on the press, you
9 know, we needed, there was a minimum order.

10 Q. That is why you asked --

11 A. 15,000.

12 Q. And there is no maximum set in
13 that?

14 A. No, and there is no minimum
15 because we could have had stuff in stock after
16 they ordered. If they ordered 10,000 we still
17 had 5,000.

18 Q. So once you got up to acceptable
19 inventory levels you were fine?

20 A. Good, okay.

21 Q. And there is no maximum listed;
22 correct?

23 A. No.

24 Q. And ITW gave you an anticipated
25 ordering number, an anticipated forecast of

1 Anthony Jacino Sr. - attorneys' eyes only
2 supply agreement Glass Star's largest customer
3 terminated it's supply agreement with Glass
4 Star.

5 Did I read that accurately?

6 A. Yes it is read accurately.

7 Q. Are you referring to Wal-Mart in
8 paragraph 50?

9 A. Yes.

10 Q. You did not have a supply
11 agreement with Wal-Mart, you operated on a
12 purchase order basis; isn't that true?

13 A. Well Anthony was the administrator
14 of the account, the Wal-Mart, and he was the
15 custodian. I am not sure what the
16 correspondence, whether it was electronic. So
17 I would have to say I don't know.

18 Q. You don't know if it is a supply
19 agreement or a purchase order basis?

20 A. Yes, I don't know.

21 Q. To your knowledge has Wal-Mart
22 paid for every purchase order submitted to you
23 and where you provided product?

24 A. To my knowledge yes.

25 Q. Are there any terms in the

1 Anthony Jacino Sr. - attorneys' eyes only
2 Wal-Mart agreement that Glass Star believes
3 Wal-Mart breached by no longer placing orders
4 for Glass Star products?

5 MS. TUFARIELLO: Objection.

6 A. Repeat the question.

7 Q. Sure. Are there any terms in the
8 agreement between Glass Star and Wal-Mart,
9 whatever that may be, that you believe
10 Wal-Mart breached by no longer placing
11 purchase orders with Glass Star?

12 A. No. There is nothing in an
13 agreement.

14 Q. Was Wal-Mart pressing Glass Star
15 to catch up on back due deliverables that were
16 due to Wal-Mart?

17 A. I don't know.

18 Q. At some point you would agree with
19 me that Glass Star got behind on it's
20 deliverables to Wal-Mart, you would agree with
21 that?

22 A. No I don't agree. I didn't know.

23 Q. You have no knowledge of whether
24 Glass Star was behind on it's deliverables to
25 Wal-Mart?

1 Anthony Jacino Sr. - attorneys' eyes only

2 Q. This is in August of 2015?

3 A. Yes.

4 Q. And in it she says quote, hi Tony,
5 at this time the decision has been made to
6 remove the windshield repair kit from the
7 modular. The in-stock has been far below
8 expectation for too long and we are not
9 recovering. We will be turning the order
10 books off and the item will be deleted as of
11 the week five modular relay.

12 Did I read that accurately?

13 A. Yes.

14 Q. So this is Wal-Mart telling Glass
15 Star in August of 2015 that they will not be
16 reordering any more product; correct?

17 A. Yes.

18 Q. And the reason that they gave was
19 that the inventory was below expectation for
20 too long and was not recovering?

21 A. Yes.

22 Q. Were you aware of any other
23 Wal-Mart complaints, I know this is the first
24 time it has been brought to your attention my
25 understanding?

1 Anthony Jacino Sr. - attorneys' eyes only

2 5:22, this is the conclusion of today's

3 deposition. March 30, 2017.

4 (Time noted 5:22 p.m.)

5 _____
6 ANTHONY JACINO, SR.

7
8 Subscribed and sworn to before me

9 this ____ day of _____, 2017

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Philip Rizzuti, a Notary
Public within and for the State of New
York, do hereby certify:

That ANTHONY JACINO, SR., the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 11th day of April,
2017.

PHILIP RIZZUTI